



Suzanne Henderson

OIL AND GAS LEASE

THIS AGREEMENT made this 15th day of July, 2008, between JOHN CALHOUN MILLER, Lessor, whose address is 1504 Pease Road, Austin, Texas 78703, and PALOMA BARNETT, LLC, a Delaware Limited Liability Company, Lessee, whose address is 1021 Main Street, Suite 2600, Houston, Texas 77002-6066.

WITNESSETH:

1. **Grant of Lease.** Lessor, in consideration of Ten and No/100 Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, the royalties herein provided, and of the covenants, conditions, agreements, and obligations of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and other minerals produced in association with oil or gas produced from the land covered hereby. The land covered hereby, herein called the "leased premises," is located in the County of Tarrant, State of Texas, and is described as follows:

116.5 acres, more or less, out of the Wm. Mask survey and W.J. Mask Survey, Tarrant County, Texas, being the same land described in Warranty Deed dated January 26, 1926, from J.W. Calhoun and wife, Evelyn Calhoun to J.O. Nagle, recorded at Volume 897, page 442, Deed Records, Tarrant County, Texas

For the purpose of determining the amount of any bonus or other payment hereunder, the leased premises shall be deemed to contain 116.5 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Notwithstanding any other provision hereof to the contrary, this lease grants Lessee no right to use the surface of the leased premises for any purpose, and Lessee shall have no right to use the surface estate of any part of the leased premises without the consent of the surface owner.

As used herein, "oil and gas" or either of them shall include other substances and by-products, such as, casinghead, flared gas, residue gas or gas remaining after separation, extraction or processing operations, and any other liquid or gaseous hydrocarbons produced through a well bore or recovered by lease operations (such as in drips or separators).

2. **Term.** Except as expressly provided below, and unless sooner terminated under other provisions hereof, this lease shall remain in force for a term of Three (3) years from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as defined in paragraph 5, are conducted upon the leased premises with no cessation of more than ninety (90) consecutive days. This is a "paid-up" lease, and no delay rental payments are necessary to maintain this lease in effect during the primary term.

3. **Option to Extend Term.** Lessee is hereby given the option to extend the primary term of this Lease for an additional period of two (2) years as to all (but not less than all) of the leased premises. Such option must be exercised prior to the end of the primary term. Lessee shall exercise such option by payment to Lessor of an additional bonus payment in the same amount paid Lessor for the original cash bonus, prior to the end of the original primary term. If Lessee exercises its option, it shall be considered for all purposes as though this lease originally provided for a primary term of five (5) years.

4. **Royalty.** Lessor shall receive as royalty on all oil and gas produced and saved from the leased premises twenty-six and one-half percent (26.5%) of the greater of (a) the market value at the point of sale or use, or (b) the total consideration received by Lessee or any Affiliate of Lessee (hereinafter defined), directly or indirectly, for the sale of such production. The royalties calculated and paid under this lease shall be free of all costs, expenses, charges or deductions of any kind, whether directly or indirectly incurred by Lessee or sought to be levied by Lessee, as a direct charge, or a reduced price, or otherwise, and regardless of where the point of sale may be. Lessee is expressly prohibited from charging Lessor a fee or surcharge of any kind in connection with its obligations under this lease. Any costs, deductions, or fees, whether directly or indirectly, that are not expressly authorized in this lease by the Lessor to be deducted from the Gross Proceeds, hereinafter defined, (or market value as the case may be) are deemed to be waived by the Lessee, and all decisions respecting who will bear any expenses and costs, whether anticipated or unforeseen, will be resolved in the favor of the Lessor. There are no circumstances under which the provisions of this lease would ever be interpreted to allow Lessee to reduce the royalty due herein by any amount other than the severance tax. In no event shall Lessor receive a price for its share of oil or gas produced from the leased premises less than Lessee and any economic benefit accruing to the Lessee shall also benefit the Lessor in the same amount pro rata in accordance with Lessor's interest in production from the leased premises, other than Lessor's proportionate



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part of severance taxes. It is the intent of the parties that the provisions of this paragraph are to be fully effective and enforceable and are not to be construed as "surplusage" under the principles set forth in *Heritage Resources v. NationsBank*, 939 S.W.2d 118 (Tex. 1997). If any contract pursuant to which gas produced hereunder is sold makes any deductions for the expenses of production, gathering, dehydration, compression, transportation, manufacture, processing, treatment or marketing of such gas, then all such deductions, including but not limited to those described above, shall be added to the price received by Lessee for such gas for the purpose of the payment of royalties, so that Lessor's royalty shall not bear, directly nor indirectly, any of such expenses. Adjustments made by the purchaser by way of reimbursement for taxes shall likewise be considered as part of the purchase price. If Lessee's purchaser must pay Lessee for oil or gas not actually produced and taken from any well on the leased premises under any "take-or-pay" or similar provision, then Lessor shall receive as royalty twenty-six and one-half percent (26.5%) of the payments so received by Lessee just as if such payments were for oil or gas produced and sold from the leased premises. If gas is later produced and sold to such purchaser to reimburse such purchaser for oil or gas paid for but not taken, then Lessor shall not be paid royalty on such "make-up" sales except to the extent, if any, that the purchaser pays any additional consideration therefor. If Lessee is required to reimburse the purchaser under the terms of the relevant purchase contract for oil or gas paid for but not taken and for which Lessor has been paid royalty, then Lessor shall be required to reimburse Lessee for royalties paid by Lessee on such oil or gas, but only to the extent of the royalty share of Lessee's actual reimbursement to its purchaser. If Lessee receives any "reservation fee", "deficiency charge", "buy-down" or "buy-out" payment, or other payment to compensate Lessee for standing ready to deliver oil or gas, or to compensate the Lessee for the purchaser's failure to take a certain quantity of oil or gas, or to change the price for any gas theretofore delivered or to be delivered in the future, or to otherwise relieve the purchaser from its contractual obligations, such fees, charges and payments shall be considered part of the consideration paid for gas sold from the leased premises, and Lessor shall receive Lessor's royalty fractional share of such payments. As used in this lease, "royalty" shall always mean a cost-free royalty as described in this paragraph. In order to implement the foregoing, the parties agree specifically as follows:

(a) As royalty, Lessee covenants and agrees:

(i) to deliver or cause to be delivered to the credit of Lessor, in the pipe line to which Lessee may connect its wells, twenty-six and one-half percent (26.5%) of all oil, condensate and liquid hydrocarbons produced and saved by Lessee from the premises, or from time to time, at the option of Lessor, Lessee shall sell Lessor's share of such oil, condensate and liquid hydrocarbons with Lessee's share and shall pay Lessor twenty-six and one-half percent (26.5%) of the Gross Proceeds (as hereafter defined) received by Lessee or any Affiliate of Lessee from the sale of all oil, condensate and liquid hydrocarbons produced and saved from the premises;

(ii) to pay Lessor on gas (including flared gas) and casinghead gas produced from the premises

(1) when sold by Lessee in an arms-length sale to an unaffiliated third party, twenty-six and one-half percent (26.5%) of the Gross Proceeds received by Lessee from the sale of such gas and casinghead gas, or

(2) when sold to an Affiliate of Lessee, twenty-six and one-half percent (26.5%) of the Gross Proceeds, computed at the point of sale, from an arms-length sale of such gas by such Affiliate of Lessee to an unaffiliated third party; and

(3) when used by Lessee, twenty-six and one-half percent (26.5%) of the market value at the point of use.

(iii) to pay Lessor on all other minerals produced in association with oil or gas and marketed or utilized by Lessee from the premises, twenty-six and one-half percent (26.5%) of the Gross Proceeds received at the point of sale.

(b) For purposes of this lease, an "Affiliate of Lessee" is any corporation, firm or other entity in which Lessee, or any parent company, subsidiary or affiliate of Lessee, owns an interest of more than ten percent (10%), whether by stock ownership or otherwise, or over which Lessee or any parent company or Affiliate of Lessee exercises any degree of control, directly or indirectly, by ownership, interlocking directorate, or in any other manner; and any corporation, firm or other entity which owns any interest in Lessee, whether by stock ownership or otherwise, or which exercises any degree of control, directly or indirectly, over Lessee, by stock ownership, interlocking directorate, or in any other manner.



(c) For purposes of this lease, "Gross Proceeds" means the total consideration paid, directly or indirectly, of whatever kind or amount, for oil and gas produced from the leased premises. Where consideration is received other than money, then "Gross Proceeds" shall include the market value of the other consideration received. Notwithstanding the foregoing:

(i) Lessor's royalty shall bear its proportionate part of severance taxes actually paid by Lessee attributable to production from the leased premises.

(ii) If gas produced from the leased premises is processed for the recovery of liquefiable hydrocarbon products prior to sale, and if such processing plant is not owned by Lessee or any Affiliate of Lessee, Lessor's royalty shall be calculated based upon the consideration received by Lessee (or any Affiliate of Lessee) from Lessee's (or Lessee's Affiliate's) sale of such liquefiable hydrocarbons and residue gas, less Lessor's proportionate part of severance taxes thereon.

(iii) If gas produced from the leased premises is processed for the recovery of liquefiable hydrocarbon products prior to sale, and if such processing plant is owned by Lessee or an Affiliate of Lessee, Lessor's royalty shall be calculated based on the total consideration received by Lessee (or any Affiliate of Lessee) from the sale of all products extracted from such gas, plus the total consideration received by Lessee (or any Affiliate of Lessee) from the sale of all residue gas, less Lessor's proportionate part of severance taxes thereon.

Royalty shall be payable on gas used on the leased premises for production operations or compression or dehydration of gas produced from the leased premises or for any other use.

(d) Notwithstanding paragraphs (a), (b) and (c) above, if the Market Value (as defined below) of oil or gas produced from the leased premises is ever greater than the Gross Proceeds therefrom, then royalties payable hereunder shall be based on the Market Value of such production. For purposes of this lease, the "Market Value" of oil or gas produced from the leased premises shall mean the highest gross price reasonably obtainable through good-faith negotiations conducted at arms' length for the quantity and quality of production available for sale at the time and place of sale.

(e) Lessee shall place oil and gas produced from the leased premises in marketable condition and shall market same as agent for Lessor, at no cost to Lessor. Lessee occupies the position of trustee for Lessor in the disposition and calculation of Lessor's royalty and shall be under the duty to exercise the utmost good faith in the disposition, sale and accounting to Lessor for Lessor's royalty. The receipt by Lessee, or Lessee's operator, of proceeds of production for distribution to Lessor will not result in Lessee, or Lessee's operator, acquiring legal or equitable title to those proceeds, but Lessee, or Lessee's operator, will at all times hold the proceeds in trust for the benefit of Lessor until the time they are actually paid out to Lessor in accordance with the terms of this lease.

(f) All royalties that may become due hereunder shall commence to be paid on the first well completed on the leased premises within one hundred twenty (120) days after the first day of the month following the month during which any well is completed and commences production. On each subsequent well, royalty payments must commence within sixty (60) days after the first day of the month following the month during which any well is completed and commences production. Thereafter, all royalties on oil shall be paid to Lessor on or before the last day of the month following the month of production, and all royalties on gas shall be paid to Lessor on or before the last day of the second month following the month of production. Royalties not paid when due shall bear interest at the maximum rate allowable by law. Interest charges shall commence on the date payment is due and shall continue until payment is made in full. In no event shall the interest rate charged be greater than the maximum allowed by law. All payments made under this lease shall be paid to Lessor by check or electronic transfer for immediate credit.

(g) Lessee shall not reduce any royalty payment due hereunder based on any adjustment relating to royalties paid in a prior period without first giving Lessor thirty (30) days' advance written notice of same, along with a full, complete, and detailed statement and explanation of the basis for any such prior period adjustment. If Lessor disputes the legitimacy of such deduction or adjustments, Lessee or purchaser shall not be entitled to make such deductions or adjustments against Lessor's royalty (and Lessor's full royalty payments shall not be interrupted) until such dispute is resolved. No royalty payment due hereunder for any one month of production shall be reduced by more than Twenty-five percent (25%) based on adjustments relating to royalties paid in prior periods. Lessee may not reduce royalties due hereunder, or assert any claim against Lessor for overpayment of royalties, or claim any right of offset against claims made by Lessor for royalties due hereunder, for any alleged royalty overpayments made by Lessee more



than two (2) years prior to Lessee's assertion of such right or claim. In no event shall Lessor be charged any interest on any prior period adjustments.

(h) If royalty is not paid by the date due, Lessor may give Lessee written notice of nonpayment of royalty, by certified mail, return receipt requested, and if Lessor's royalty (including any interest charges as described above) is not paid on or before expiration of thirty (30) days from Lessee's receipt of such notice, Lessor may terminate this lease and evict Lessee forthwith. However, if there is a bona fide dispute or a good faith question of royalty entitlement (either as to ownership or as to amount), based on an attorney's written opinion furnished to Lessor prior to the expiration of such thirty (30) days, Lessee may pay the disputed portion of Lessor's royalty to a trustee to be selected by both parties, to be retained by such trustee and invested in interest-bearing accounts pending resolution of the entitlement issue, with the interest to belong to the successful party. If the parties do not or cannot agree on a trustee, Lessee may tender the royalty into a court of competent jurisdiction by Bill of Interpleader, to be so held and invested by the clerk under the direction of the court. If the royalty is so paid to such trustee or to the court within the time provided, then Lessor shall not have the right to terminate this lease for nonpayment of royalty.

(i) It shall not be necessary for Lessor to execute any division or transfer order in order to be entitled to payment of royalties due under this lease. Lessee and any purchaser of oil or gas produced from the leased premises hereby waive the provisions of Section 91.402(c)(1) of the Texas Natural Resources Code which entitle a payor of royalties to require a signed division order as a condition to payment. If Lessor agrees to accept payment of royalties from a purchaser of oil or gas produced from the leased premises, or from another party designated to distribute royalties other than Lessee, Lessor's acceptance of such payments shall not relieve Lessee of its obligation to pay royalty hereunder except to the extent of payments actually received by Lessor from such third party, and if such third party fails to pay any sums due as royalty under this lease, Lessee shall remain fully liable therefor, whether or not Lessee has received payment for production from such purchaser or third party.

(j) Without limiting Lessor's rights or Lessee's obligations under any other provision of this lease, commencing on the completion date of the first well drilled on the leased premises as a producing well, no more often than once in any two-year period during the term of this lease Lessor shall have the right to have an audit of the books, accounts, contracts, records, and data of Lessee pertaining to the development, production, saving, transportation, sale, and marketing of the oil, gas, and sulphur produced from or attributable to the leased premises conducted. If the exceptions or deficiencies in royalty payments by Lessee as revealed by the audit (the "audit exceptions") are, either by agreement of Lessor and Lessee or by a final, non-appealable judgment binding on the parties, determined to be more than the cost and expense of such audit, then Lessee shall reimburse Lessor for the cost of such audit within thirty (30) days after the earlier of (i) the date of the agreement of the parties respecting the amount or amounts of the audit exceptions or (ii) the date upon which a judgment binding on the parties and determining the amount or amounts of the audit exceptions becomes final and non-appealable. If the audit exceptions are, either by agreement of Lessor and Lessee or by a final, non-appealable judgment binding on the parties, determined to be less than the cost and expense of the audit, such cost and expense shall be borne by Lessor. Lessee shall pay Lessor all sums due Lessor as disclosed by said audit, together with interest thereon as provided for herein, within thirty (30) days after the earlier of (i) the date of the agreement of the parties respecting the amount or amounts of the audit exceptions or (ii) the date upon which a judgment binding on the parties and determining the amount or amounts of the audit exceptions becomes final and non-appealable.

(k) Lessor hereby retains a security interest in (i) all of the oil and gas produced and saved from the leased premises under and pursuant to this lease, and (ii) all proceeds of sale of such oil and gas and all accounts arising therefrom (the "Collateral"), to secure Lessee's payment of royalties and compliance with the other terms and provisions of this lease. In addition to any other remedies provided in this lease, Lessor, as a secured party, may in event of Lessee's default in any obligation of Lessee under this lease proceed under the Texas Uniform Commercial Code (the "Code") as to the Collateral, in any manner permitted by the Code. The Collateral includes minerals to be financed at the well head of the wells and accounts from the sale thereof. This lease, when filed in the real property records where the leased premises are located, shall constitute a financing statement under the Code. If a memorandum of this lease is filed in lieu of filing this lease in the real property records, then such memorandum shall also constitute a financing statement under the Code.

(l) If, by reason of assignments of undivided interests in Lessee's interest in this lease, more than one party becomes entitled to a portion of Lessee's share of gas produced from any well on the leased premises, and if any or all of such co-owners elect to take their share of gas in kind, resulting in split-stream deliveries of gas to different purchasers, Lessor shall be entitled, at Lessor's election, to require the operator of the leased premises to pay and account to Lessor for all royalties due on gas production from the well or wells from which split-stream deliveries are being made, so that Lessor shall not be required to receive royalties from more than one (1) purchaser or party on the



same gas stream. If Lessor exercises such election, the operator of the leased premises (or of that portion of the leased premises upon which the split-stream production is located) shall pay to Lessor all royalties due on such gas production and shall provide production statements from all purchasers of such gas showing the amounts sold and the price paid therefor, with any applicable adjustments. Such election, if made, shall not relieve any party otherwise liable for payment of royalties from such liability, and all parties owning an undivided interest in all or any portion of the leased premises shall be and remain jointly and severally liable for the payment of all royalties due on production therefrom.

5. **"Operations"**. The term "operations" as used in this lease shall mean only (i) the production of oil, gas or other hydrocarbons in paying quantities and (ii) the actual drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil or gas, conducted in good faith and with due diligence; and drilling operations will not be considered as being conducted unless a rig capable of drilling to the prospective depth is actually in place and rotating under power.

6. **Shut-In Royalty**. If there shall be a well on the leased premises capable of producing gas or gas and condensate in paying quantities, but the production thereof is shut-in or suspended for any reason (which well is herein sometimes called a "shut-in" gas well), Lessee may pay or tender to Lessor, as shut-in gas well royalty, a yearly sum equal to Ten Thousand and No/100ths Dollars (\$10,000.00) for each shut-in gas well. The first such payment of shut-in gas well royalty is to be made on or before sixty (60) days after the day on which such well was shut in. Two subsequent shut-in royalty payments may be made thereafter on or before the anniversary of the first shut-in royalty payment; and if such shut-in gas well royalty shall be paid or tendered as above provided, it shall be considered for purposes of this lease that such well is producing gas in paying quantities for a period of one (1) year from the first due date of such payment, and for two subsequent annual periods thereafter; provided, however, that the payment of shut-in gas well royalty shall not prevent the termination of this lease as to portions of acreage covered hereby, in accordance with the provisions of paragraph 7 hereof. Notwithstanding the making of such shut-in gas well royalty payments, Lessee shall be and remain under the continuing obligation to (i) use all reasonable efforts to find a market for said gas and to commence or resume marketing same when a market is available, (ii) reasonably develop the lands then subject to this lease and (iii) drill all such wells on the lands then subject to this lease as may be reasonably necessary to protect same from drainage by wells on adjoining or adjacent lands. All payments or tenders provided for in this paragraph shall be made to Lessor personally.

7. **Partial Termination**.

(a) The production of oil or gas under the terms of this lease will maintain this lease beyond its primary term only as to that portion of the leased premises actually included within a production unit or units created and designated around wells then producing in paying quantities. A "production unit," for purposes of this lease, is a designated area of land around a well, which shall not exceed the following sizes:

(i) If the well is classified as an oil well under the Rules and Regulations of the Railroad Commission then in effect, the maximum size of the production unit shall be 40 acres.

(ii) If the well is classified as a gas well under the Rules and Regulations of the Railroad Commission of Texas then in effect, the maximum size of the production unit shall be 320 acres.

(iii) If the well is classified as a horizontal well (whether oil or gas) under the Rules and Regulations of the Railroad Commission then in effect, then the maximum size of the production unit shall be 640 acres.

(b) Insofar as possible, taking into consideration the productive limits of the producing interval and the configuration of the leased premises, the lands included within the production unit for a well shall be in the form of a square or rectangle, as near as possible. Every effort shall be made in designating production units to avoid releasing small or irregularly shaped portions of the leased premises, or portions not contiguous with other released portions. Acreage assigned to wells producing from different zones may overlap, and shall overlap when necessary to comply with the requirements of this paragraph 7. If a well is producing from more than one formation, its production unit's size and configuration shall conform to the Railroad Commission rules applicable to the well which provide the largest production unit (subject to the size limitations stated above). If all or a portion of the leased premises is included in a pooled unit, then for purposes of this paragraph 7 all the lands within the pooled unit shall be considered a part of the leased premises, and the size and configuration of the pooled unit must conform to the requirements of this paragraph 7 for a production unit.

(c) As to any acreage which is not included within any production unit at the expiration of the primary term, Lessee may maintain this lease as to such excluded acreage beyond the primary term only by conducting drilling



operations thereon with no cessation of more than ninety (90) consecutive days; and at such time as such operations cease, Lessee shall designate any additional production units resulting from such operations, and this lease shall automatically terminate and be of no further force or effect as to any acreage not within such designated units.

(d) In addition, at the end of the primary term, or (if at the end of the primary term Lessee is conducting drilling operations on the leased premises) upon cessation of such operations for more than ninety (90) consecutive days, whichever is later, this lease shall terminate as to all depths and horizons under each production unit below one hundred feet (100') below the stratigraphic equivalent of the deepest producing formation from which production of oil or gas in paying quantities is being maintained (or, in the case of a shut-in gas well, can be maintained) in the well on such production unit.

(e) As to acreage which is included within a production unit, this lease may be held in force after the termination of the primary term only by production from, or operations conducted (as provided in this lease) on, such unit; and production from, or operations conducted on, one unit will not maintain this lease in force as to any other acreage included within any other unit, but such production or operations will maintain this lease only as to the acreage within the unit or units upon which such production or operations are being maintained or conducted.

(f) Upon termination of this lease as to any portion of the leased premises, Lessee shall deliver to Lessor a plat showing the designated production units around each well and a partial release complying with the requirements of this paragraph 7, suitable for recording.

8. **Partial Releases.** Lessee shall have the right at any time and from time to time during the term of this lease to release from the lands covered hereby any lands subject to this lease and thereby be relieved of all obligations thereafter accruing as to the acreage so released, provided that (1) Lessee may not release any portion of this lease included in a pooled unit as long as operations are being conducted on such unit, and (2) any such partial release must release all depths in and under the lands so released.

9. **Holding Over.** If Lessee continues in possession of the leased premises after termination or expiration of this lease (whether such termination occurs by the lapse of production or otherwise), other than for the purpose of plugging abandoned wells, removing equipment, and restoring the leased premises as required by this lease, Lessee shall be considered a tenant at will. The terms of this lease shall continue to apply to Lessee's continued possession.

10. **Pooled Units.**

- a. Subject to any limitations provided below, Lessee is hereby granted the right, at its option, to pool or unitize all (but not less than all) of the land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all oil or gas or horizons, for production from a well classified by the Texas Railroad Commission as a gas well, so as to establish pooled units.
- b. Lessee shall exercise said option as to each desired pooled unit by executing an instrument identifying such pooled unit and filing it for record in the public office in which this lease is recorded, and furnishing a copy to Lessor. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on the leased premises, or on the portion of the leased premises included in the pooled unit, or on other land unitized therewith. A pooled unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the pooled unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon that portion of the leased premises included in the pooled unit.
- c. There shall be allocated to the land covered by this lease within each such pooled unit (or to each separate tract within the pooled unit if this lease covers separate tracts within the pooled unit) that proportion of the total production of unitized oil or gas from the pooled unit which the number of surface areas in such land (or in each such separate tract) covered by this lease within the pooled unit bears to the total number of surface acres in the pooled unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty under this lease, to be the entire production of unitized oil or gas from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The formation of any pooled unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable

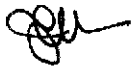


under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 8 hereof, except that Lessee may not so release as to lands within a pooled unit while there are operations thereon for unitized minerals. At any time while this lease is in force Lessee may dissolve any pooled unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time there is no well located on the pooled unit which is producing or capable of producing oil or gas in paying quantities.

- d. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 10, with consequent allocation of production as herein provided. As used in this paragraph 10, the words "separate tract" means any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.
- e. Pooled units created hereunder shall not exceed the size limitations set forth in paragraph 7(a) for production units.
- f. If there are royalty interests in oil and gas in the leased premises now owned by parties other than Lessor, Lessor makes no warranty or representation that this lease grants Lessee the power or authority to pool such royalty interests, but in the event of pooling hereunder Lessor's royalty on production from the pooled unit shall be calculated and paid as if Lessee had the power, and had exercised the power, to pool such royalty interests, whether or not Lessee in fact has such authority.
- g. In the event a portion or portions of the land herein leased is pooled or unitized with other land so as to form a pooled unit or units, operations on, completion of a well upon, or production from such pooled unit will not maintain this lease in force as to the land not included in such pooled unit or units. This lease may be maintained in force as to any land covered hereby and not included in such pooled unit or units in any manner provided for herein.

11. **Assignment.** The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any oil or gas horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No assignment by Lessee (or any assignee of Lessee) of all or any portion of or interest in this lease shall relieve Lessee (or any assignee of Lessee) of any liability for breach of any covenant, warranty or other obligation of Lessee hereunder, whether theretofore or thereafter accrued. Each assignee of all or any portion of the rights of Lessee hereunder agrees to be bound by the provisions of this lease to the same extent as if such assignee were an original party to this lease. Notwithstanding any assignment by Lessee of a segregated portion of this lease, default by Lessee or any assignee or subassignee of Lessee in any covenant or condition in this lease shall constitute default as to the entire lease. Lessee shall within sixty (60) days of the assignment of this lease or any part thereof notify Lessor of such assignment and furnish Lessor a true copy of any assignment. All notices to Lessee hereunder may be given to the Lessee named herein, notwithstanding the assignment of part or all of this lease. No change or division in the ownership of the leased premises, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof to Lessee, its successors or assigns, no change or division in the ownership of the leased premises or of the royalties or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the Lessee until thirty (30) days after there has been furnished to Lessee at its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of Lessee to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may nevertheless pay or tender such royalties or other moneys, or part thereof, to Lessor.

12. **Proportionate Reduction.** This lease is made without warranty of title, express, implied or statutory. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on the leased premises, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil or gas in all or any part of the leased premises than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties (but not the additional bonus provided in paragraph 3 or the shut-in royalty provided in paragraph 6) accruing from any part as to which this lease covers less than such full interest,



shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Except as provided in paragraph 10, all royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided.

13. **Force Majeure.** Should Lessee be prevented from complying with any express or implied covenant of this lease (except payment of money), from conducting drilling or reworking operations thereon or from producing oil or gas therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure (including acts of God), war, strike, rebellion, any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the leased premises. However, no event or cause stated in the preceding sentence shall be effective to extend the primary term of this lease more than ninety (90) days beyond the end of the primary term of this lease.

14. **Access to Information.** Lessor shall have the right once per year, at Lessee's place of business, personally or by representative, to inspect and copy (or be provided a copy of) the books, accounts, contracts, records and data of Lessee pertaining to the development, production, saving, processing, transportation, sale and marketing of the oil, gas and any other substances produced from or attributable to the leased premises. Lessee shall furnish Lessor with a copy of (i) any Gas Sales Contract or Gas Processing Contract covering the sale or processing of gas from the leased premises (including any such contracts for sale of such gas by an Affiliate of Lessee), and (ii) any sales agreement for the disposition of oil or condensate produced from the leased premises, as soon as such contracts are executed and delivered to Lessee. Lessee shall furnish Lessor a copy of all gas plant settlement statements reflecting the processing of gas produced from the leased premises and the allocations made pursuant to any processing agreement or similar agreement, and full information as to all oil, gas and liquefiable hydrocarbons produced and sold from the leased premises and acreage pooled therewith. Further, Lessee agrees to furnish Lessor, upon request, copies of all title opinions covering the leased premises, copies of all filings made by Lessee with the Railroad Commission of Texas pertinent to drilling and completing wells.

15. **Indemnity.** Lessee agrees to defend, indemnify and hold harmless Lessor, their partners, trustees, beneficiaries, directors, officers, employees, heirs, successors, representatives, agents and assigns (all such parties being hereafter called "Indemnitees"), from and against any and all claims, demands and causes of action, including, without limitation, claims for injury (including death) or damage to persons or property arising out of, incidental to or resulting from the operations of or for Lessee, its servants, agents, employees, guests, licensees, invitees or independent contractors, and from and against all costs and expenses incurred by Indemnities by reason of any such claim or claims, including attorneys' and expert witness' fees; and each assignee of this lease, or an interest therein, agrees to defend, indemnify and hold harmless Indemnities in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted under or pursuant to this lease, howsoever caused, **INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF INDEMNITEES. LESSEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES SHALL APPLY WHETHER OR NOT INDEMNITEES MAY BE GUILTY OF ANY NEGLIGENT OR GROSSLY NEGLIGENT ACT OR OMISSION WHICH RESULTED IN OR CONTRIBUTED TO THE COST, EXPENSE OR LIABILITY AGAINST WHICH LESSEE IS OBLIGATED TO INDEMNIFY INDEMNITEES HEREUNDER, AND WHETHER OR NOT INDEMNITEES' LIABILITY IS IMPOSED BY ANY STATUTORY OR COMMON-LAW THEORY OF STRICT LIABILITY. HOWEVER, LESSEE SHALL NOT BE OBLIGATED TO INDEMNIFY INDEMNITEES AGAINST A CLAIM IF IT IS DETERMINED BY A FINAL, NON-APPEALABLE JUDGMENT THAT THE INDEMNITEE WAS GUILTY OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

16. **Reasonable Development.** If oil or gas is discovered on the leased premises, Lessee shall develop the leased premises as a reasonable and prudent operator would do under the same or similar circumstances. Lessee shall protect the oil and gas in and under the leased premises from drainage by wells on adjoining or adjacent tracts or leases as a reasonable and prudent operator. Neither the rentals, royalties nor the shut-in gas well royalties paid or to be paid hereunder, nor any other provision of this lease, shall relieve Lessee of the obligation to reasonably develop the leased premises and to reasonably protect the oil and gas in and under the leased premises from drainage by wells on adjoining lands or leases. Lessee agrees to notify Lessor of the need to sue an adjoining owner, lessee or operator for damages resulting from drainage or for damage to a common reservoir. If Lessee intends to make a claim or to file suit for such drainage or damage, Lessee will notify Lessor and will represent Lessor in such claim or cause of action without cost to Lessor unless Lessor notifies Lessee in writing to the contrary. If Lessee recovers damages as a result of such claim, either by settlement or judgment, Lessor shall be entitled to share in such recovery pro rata in accordance with Lessor's interest in production from the leased premises whether or not Lessor is a party to such settlement or judgment.



17. **Ratification.** Neither the acceptance of royalties, shut-in royalties or other payments by Lessor (regardless of any notation thereon or instrument accompanying same), nor Lessor's execution of any division order or transfer order or similar instrument, shall ever constitute or be deemed to effect (a) a ratification, renewal or amendment of this lease or of any pooled unit designation filed by Lessee purporting to exercise the pooling rights granted to Lessee in this lease, or (b) a waiver of the rights granted to Lessor, or the obligations imposed upon Lessee, express or implied, by the terms of this lease, or remedies for Lessee's breach thereof, or (c) an estoppel against Lessor preventing Lessor from enforcing Lessor's rights or Lessee's obligations hereunder, express or implied, or from seeking damages for Lessee's breach thereof. Lessor's agreement to accept royalties from any purchaser shall not affect Lessee's obligation to pay royalties pursuant to this lease. No instrument executed by Lessor shall be effective to constitute a ratification, renewal, extension or amendment of this lease unless the instrument is clearly titled to indicate its purpose and intent.

18. **Seismic Operations.** Lessee shall have the right to conduct seismic operations on the leased premises, and to contract with third parties to conduct seismic operations, for Lessee's own account and use. If Lessee contracts with an independent contractor third party to perform seismic operations on Lessee's behalf, Lessor shall nevertheless be entitled to deal only with a representative of Lessee in connection with such operations, and shall not be required to contract or negotiate with such independent contractor.

19. **Surface Provisions.** Lessor is not the owner of the surface estate, and makes no warranties or representations with respect thereto. Lessee agrees to defend, indemnify and hold harmless Lessor from any and all liability for injury or damage to person or property caused by any act or omission of Lessee, its agents, employees, invitees, independent contractors, successors, or assigns, upon or with respect to the surface estate, **EVEN IF SUCH LIABILITIES ARE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OR BY THE STRICT LIABILITY OF ANY INDEMNITEE (as defined in paragraph 15 hereof).**

20. **Notice of Breach.** In instances other than a failure of Lessee to pay Lessor royalties (the procedure for such instance being described in paragraph 4.(h) hereof), and in the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

21. **Addresses for Notices.** Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand-delivered; (ii) sent by Federal Express or a comparable overnight delivery service; or (iii) by depositing same in the United States mail addressed to the party to be notified, postage prepaid and certified with return receipt requested, to the following addresses:

If to Lessor: 1504 Pease Road, Austin, TX 78703

If to Lessee: 1021 Main Street, Suite 2600, Houston, Texas 77002-6066

or to such other address as the Lessor or Lessee may designate by notice to the other party by certified mail, return receipt requested, and such notice shall be effective when received or seven (7) calendar days after mailing whichever is earlier.

22. **Place of Performance.** All obligations of Lessee other than the payment of money shall be performable in the county or counties in which the leased premises are situated. All obligations of Lessee for the payment of money shall be performable in the county of residence of each Lessor. Venue for any action to enforce Lessee's obligations hereunder shall lie in the county in which the leased premises are situated or in the county of residence of any party hereto.

23. **Attorney's Fees and Expenses.** In the event that either party is required to employ legal counsel and/or other professionals for the enforcement of any provision of this lease and prevails, the prevailing party will be entitled to recover from the non-prevailing party, attorney's fees, fees and costs of accountants, geologists, engineers and other experts actually employed by the prevailing party with regard to such claim, and any other related expenses incurred by the prevailing party relating to such claim.

[signatures follow on the next page]



IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:


JOHN CALHOUN MILLER

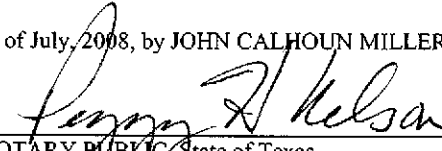
THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 15th day of July, 2008, by JOHN CALHOUN MILLER.

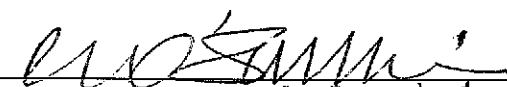


Peggy H. Nelson
Notary Public, State of Texas
My Commission Expires
NOV. 22, 2008


NOTARY PUBLIC, State of Texas

LESSEE:

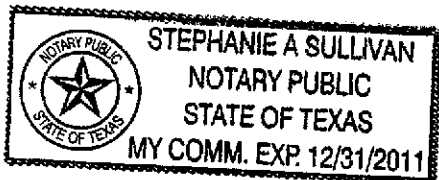
PALOMA BARNETT, LLC, a Delaware Limited Liability Company


By: 
Its President

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 31 day of July, 2008, by Chris D. Sullivan President on behalf of PALOMA BARNETT, LLC, a Delaware Limited Liability Company.




NOTARY PUBLIC, State of Texas